

MCIW's Position

Until October of 2000, Verizon PA transmitted jeopardy notifications via the Open Query System (OQS) reports posted on the its website. In addition, Verizon PA occasionally transmitted these notices via phone calls. Both methods are deficient. Verizon PA sometimes fails to transmit the OQS report at all, and if it does, the report often contains defects. For example, sometimes the report does not include all jeopardies. 2/12/01 MCIW Joint Decl. at ¶ 38.

In October of 2000, Verizon PA began transmitting jeopardy reports through EDI. These reports were also incomplete. Id. at ¶ 40. Verizon PA has not taken any steps to ensure that all of the jeopardies it transmits are included on its EDI jeopardy reports. Despite its promise to begin transmitting all jeopardies via EDI, Verizon PA informed MCIW in January 2001 that some jeopardies would appear only on the OQS reports, while other jeopardies would appear only on the EDI reports. As a result, MCIW is forced to work both sets of jeopardy reports. This process is further complicated by the fact that the reports overlap significantly. 4/18/01 MCIW Joint Decl. at ¶¶ 24, 25.

b. PAPUC Findings

The accuracy and timeliness of jeopardy reports is an important issue. These reports are the means by which Verizon PA informs a CLEC that an order will not be completed on time.

The record demonstrates that Verizon PA has been providing jeopardy information in a manner that allows CLECs a meaningful opportunity to compete. MCIW's claim that Verizon PA's jeopardy reports are deficient is unsubstantiated as MCIW did not provide any evidence, through testimony or data, to substantiate its allegation. MCIW's assertions, alone, without corroborating evidence, are not sufficient to prove

noncompliance on this issue.

8. Call-Blocking

a. Summary of Evidence

MCIW's Position

Verizon PA has failed to provision multiple call blocking options. If a customer orders both blocking of 3rd party calls and 900/976 blocking, the customer would only receive the first blocking option for 3rd party calls. 4/18/01 MCIW Joint Decl. at ¶ 28. On a going-forward basis, Verizon PA has fixed its systems to correct this problem. However, Verizon PA has yet to correct the problem for customers who placed orders prior to this February 2000 fix. Verizon PA has indicated that it will also fix these orders by the end of June of 2001, which is one month later than the original date given for the fix. 4/27/01 Tr. at 478-479. MCIW believes that this delay illustrates Verizon PA's low priority for fixing CLEC problems. 4/18/01 MCIW Joint Decl. at ¶ 29.

b. PAPUC Findings

While the consequences of a failure to block are potentially significant to the customer (for example, a child is able to complete a 900-call that should have been blocked), this problem is limited in scope and frequency and does not affect commercial viability. Moreover, Verizon PA has fixed the problem on a going-forward basis and has represented that it will fix pre-February, 2001 orders by June of 2001.

9. Maintenance & Repair

a. Summary of Evidence

Verizon PA's Position

The record shows that Verizon PA uses the same interfaces in Pennsylvania that Verizon PA uses in New York. As per the January and February 2001 Pennsylvania C2C reports, these interfaces have been performing excellently. No CLEC has challenged this proof. 4/18/01 VZ Comments at 69. In Pennsylvania, Verizon PA provides CLECs with two interfaces for access to its maintenance and repair OSS. VZ OSS Decl. at ¶ 131. The most commonly used is the Web GUI, which provides access to the RETAS platform. Currently, 30 Pennsylvania CLECs use Web GUI. Verizon PA also offers an application-to-application interface, electronic bonding, used by only one CLEC. VZ Supp. OSS Decl. at ¶ 76. CLECs using Verizon PA's EDI interface are able to perform six maintenance and repair tasks or functions. The same six tasks or functions are available in Pennsylvania. VZ OSS Decl. at ¶ 132.

The FCC also assesses RETAS response times to determine whether maintenance and repair interface and systems process trouble inquiries from competing carriers in substantially the same time and manner as [Verizon PA] processes inquiries concerning its own retail customers.²⁰⁸ As per the January and February 2001 Pennsylvania C2C reports, the RETAS results for Pennsylvania are better than the New York results in that they consistently demonstrate response times equal to, or better than the C2C established standard.

Finally, KPMG's independent third party testing indicates that maintenance and repair interfaces can handle reasonably foreseeable demand levels. The record shows both that Verizon PA Maintenance and Repair OSS meet actual levels of use and that KPMG was satisfied with every test point in the Maintenance and Repair domain. KPMG Final OSS Test Report at 423-500.

²⁰⁸ Although the numerous measurements taken under the C2C approach in New York were not uniformly within the applicable standards, the FCC determined that the differences were small and were -- like here -- not even alleged to impair CLEC access to maintenance and repair functions. NY Order at ¶ 219.

b. PAPUC Findings

The record demonstrates that Verizon PA is providing non-discriminatory access to maintenance and repair functions. The January through March 2001 commercial data supports that the performance of these systems is strong and improving. However, there are several Checklist two Maintenance & Repair metrics with misses where the remedy is Parity plus 4 seconds: MR-1-01 “Average Response Time – Create Trouble - EB,” MR-1-03 “Average Response Time – Modify Trouble - EB,” MR-1-06 Average Response Time – Test Trouble – EB.” With one exception, no metric was missed by more than a quarter of a second; that one exception was missed by less than half a second. In terms of “time lost = cost” to the CLECs, the worst miss/loss was MR-1-06 in February 2001 which “cost” the CLECs on an aggregated basis a total of 963 seconds or 16 minutes based upon 67 observations.

In addition, KPMG’s third party test found Verizon PA’s maintenance & repair systems to be satisfied on all test points.

10. Billing

a. Summary of Evidence

Verizon PA’s Position

The C2C billing measurements reported in Pennsylvania demonstrate that Verizon PA is meeting these established performance standards. In addition, KPMG has reviewed these Verizon PA OSS billing functions in detail. Each was ultimately resolved to KPMG’s satisfaction. KPMG OSS Test Final Report at 501-72.

The CLECs raised several billing issues relating to the provision of the DUF in their comments and at the Technical Conferences. With the exception of claims of misdirected usage, these issues were relatively minor in nature. All of these issues,

including those relating to misdirected usage, have been resolved. VZ Supp. OSS Decl. at ¶¶ 86-88.

Several CLECs also raised issues with respect to the carrier billing they receive from Verizon PA. Among these were technical issues relating to the application of taxes and the inclusion of directory advertising charges. Many of these issues were already outdated when they were raised, having been previously resolved. The others have now also been addressed. Id. at ¶¶ 92-98.

The most significant issue raised by the CLECs is whether Verizon PA is supplying an adequate electronic carrier bill, using the BOS-BDT specification. Verizon PA recognizes that an electronic bill is most assuredly a desirable media for CLECs. Verizon PA fully understands the importance of an electronic bill to facilitate an expedited review and settlement of inter-company billing disputes. 3/7/01 Tr. at 75. Verizon PA has made significant strides in addressing the issues raised by CLECs and is continuing to improve the BOS-BDT product to ensure that it meets CLEC needs. Indeed, programming modifications made in the last few weeks are expected to improve the reliability and usefulness of BOS-BDT very substantially. VZ Supp. OSS Decl. at ¶¶ 102-03.

AT&T's Position

Verizon PA continues to refuse to provide AT&T with a usable mechanized or electronic version of AT&T's UNE-P bills. Since November of 1999, AT&T has requested that its UNE-P bills be submitted in an electronic, mechanized format known as cartridge Billing Output Specifications/Bill Data Tape or BOS/BDT. According to AT&T, Verizon PA's BOS/BDT bills are incomplete and contain errors. 4/4/01 Tr. at 57-59; 4/18/01 AT&T Final Comments at 35. Because Verizon PA is unable to produce a useable and accurate electronic bill, AT&T continues to receive only paper bills for

both UNE-P and UNE loops. The mounds of paper that AT&T receive with each bill, which can be stacked three feet high, make it impossible to review each bill for accuracy. AT&T OSS Decl. at ¶ 83.

AT&T also alleges that Verizon PA's DUF tapes contain inaccurate information, such as usage information for customers that are not AT&T customers. AT&T OSS Decl. at ¶ 86; 4/18/01 AT&T Comments at 37.

MCIW's Position

Since shortly after the passage of TA-96, MCIW has requested electronic bills from Verizon PA as it is extremely difficult and costly to audit paper bills. Without electronic bills, MCIW has no efficient way to determine whether it is being over charged. Verizon PA did not begin providing electronic bills to MCIW until November of 2000. However, these bills are often late, inaccurate, contain numerous formatting errors, and require MCIW to manually enter the incorrectly formatted data into its systems. 2/12/01 MCIW Comments at 44; 4/18/01 MCIW Joint Decl. at ¶¶ 31, 32 and ¶¶ 58-64. Even after November of 2000, MCIW continues to receive paper bills for many customers as Verizon PA continues to transmit a subset of MCIW's UNE-P bills, resale bills, and others in paper format. MCIW is still receiving approximately 125 boxes of paper bills per month. MCIW cannot realistically audit this amount. 4/18/01 MCIW Joint Decl. at ¶ 64.

Z-Tel's Position

Z-Tel has been unable to completely audit its UNE-P bill in Pennsylvania because electronic billing is not available, despite Verizon PA's commitment to do so. Rather, Z-Tel must spend hundreds of hours pouring over tariffs, contracts, UNE-P rate sheets, and bill samples to analyze its bills. 2/12/01 Z-Tel Comments at 4. Because of the large volume of paper bills, Z-Tel is unable to audit every box. Z-Tel bases its billing estimate

on the number of customers in a given month and the corresponding usage resulting from those customers. Z-Tel pays this estimated amount and disputes any amount above the estimate. 3/7/01 Tr. at 137. Unfortunately, this inaccuracy is not captured in BI-3.

Because it takes Z-Tel so long to “audit” its bills, Z-Tel cannot timely report these inaccuracies for capture in the metrics. Id. at 139.

Verizon PA’s bills to Z-Tel also contain numerous inaccuracies including but not limited to incorrect billing of taxes (Z-Tel is billed for taxes for certain products/services for which it is tax-exempt). Between May and December of 2000, Verizon PA’s bills to Z-Tel, on average, contained a margin of error of over 20%. Verizon PA recently agreed with this assessment of over charges and credit Z-Tel with the full amount in dispute. 2/12/01 Z-Tel Comments at 3.

Curry’s Position

Verizon PA’s paper bills are incomplete. For example, Verizon PA’s paper bills do not itemize products and services. Instead, Curry uses the DUF, which contains the relevant call details information necessary to prepare end-user bills. However, Curry does not receive the DUF in a timely fashion. 3/15/01 Tr. at 151-152. Because of the incompleteness of the paper bills and the untimeliness of the DUF, Curry’s payment to VZ for resold services ends up being due before Curry can bill its end-users for those services. Id. at 156.

Curry also has billing accuracy issues. Curry complains that Verizon PA billing errors are constant. These errors were discovered by reviewing paper bills, page by page, and by reviewing customer service records to verify the proper billing components. These errors include the improper inclusion of taxes into the bill and the improper inclusion of directory advertising charges. There are also errors with billing adjustments and mysterious transfer charges. Many of these errors are duplicative of previous errors.

Id. at 165, 174, and 177. These same billing issues were recapitulated in OTS's 4/18/01 Final Comments at 4-10.

MetTel's Position

Verizon PA's current billing system in Pennsylvania presents severe problems. MetTel receives only paper bills, instead of the tape cartridge (BOS/BDT) that it has repeatedly requested. Manifestly, these paper bills cannot be reconciled in a cost efficient or commercially reasonable manner. 2/12/01 MetTel Comments at 4. MetTel has not been receiving all of its usage records. Verizon PA has been sending (and charging for) empty usage tapes. Id. at 7.

b. PAPUC Findings

Billing is an important aspect of the competitive marketplace. Verizon PA needs to issue timely, accurate, auditable bills to be paid and to give its CLEC customers a meaningful and realistic opportunity to accurately assess their operational costs. It is undisputed that electronic billing²⁰⁹ is an essential component of the billing process as established in the record. Without adequate electronic billing, CLECs are unable to verify the accuracy of Verizon PA's wholesale bills in a timely manner.

Verizon PA has taken numerous steps to facilitate the availability of accurate electronic billing. Verizon PA's electronic bill relies on its paper bill, which KPMG has found to be acceptable. Verizon PA allows CLECs to choose the BOS-BDT bill format

²⁰⁹ Verizon PA produces bills in several different formats that are available on several different media. One format is paper. Another is electronic. BOS-BDT is an electronic bill format that is currently available via the media of electronic file transfer using Connect:DIRECT or on a magnetic tape. VZ OSS Decl. ¶ 146. BOS-BDT is scheduled to be available on the medium of CD-ROM for UNE and Resale customers in August 2001. 5/23/01 VZ Response to 5/15/01 Staff Data Request #1.

as the official bill of record.²¹⁰ Previously, the paper format was the exclusive “bill of record” in Pennsylvania. Verizon PA has also indicated that the scheduled modifications to the BOS-BDT formatted bills will be completed on or about June 16, 2001. However, Verizon PA also indicated that it will maintain a manual review process for a minimum of three bill cycles to ensure that its processes have captured and corrected all issues.²¹¹ Previously, these manual processes discussed in Verizon PA’s Supplemental OSS Declaration were necessary to provide 33 CLECs with balanced and verifiable BOS-BDT bills.

We find these measures satisfy Verizon PA’s checklist obligations given the facts that CLECs are now able to obtain electronic bills as the bill of record from Verizon PA and, in the PAPUC’s judgment, Verizon PA has satisfied this aspect of its OSS obligations for section 271 approval purposes.

In addition, to ensure continued focus on this issue, we have chosen to adopt electronic billing metrics and remedies to incent timely and effective implementation of these modifications. Verizon PA is now subject to greater remedies liabilities until the conclusion of the further proceeding established in ordering paragraph 16 of the Functional Structural Separations Order. First, Verizon PA has agreed to apply billing metrics applicable to the paper bill to the electronic bill. Verizon PA has also agreed to increase billing remedy payments as follows: (1) for violations up to 30 days, \$50,000 per missed metric per affected CLEC; (2) for violations up to 60 days, \$75,000 per missed metric per affected CLEC, and (3) for violations up to 90 days and each month thereafter, \$100,000 per missed metric per affected CLEC.

11. Conclusion Regarding OSS

²¹⁰ 5/23/01 VZ Response to 5/15/01 Staff Data Request #1.

²¹¹ Id.

The PAPUC concludes that Verizon PA's OSS is deployed and ready. Across the spectrum of metrics applicable to Checklist Item No. 2, Verizon PA has demonstrated fairly continuous improvement in its ability to perform up to the expected standards throughout the commercial availability period and into April 2001. Where Verizon PA's performance was less than adequate, we do not see this as an indication of negative trending, nor do we see these discrepancies as materially impacting the competitiveness of the Pennsylvania markets. While these failures may be reason to require Verizon PA to pay a remedy to affected CLECs, this performance is not so problematic as to warrant a negative 271 recommendation. We do not believe that the misses, when coupled with improving performance, warrant a negative 271 recommendation. Verizon PA has demonstrated compliance on this sub-issue of Checklist Item No. 2.

12. Adequacy of Verizon PA's Change Management Process

a. Description

"Change management" refers to the methods and procedures that a BOC employs to communicate with CLECs regarding the performance of and changes to the processes that affect interconnection and market access. These processes generally relate to the interpretation, application, and fine-tuning of existing systems and metrics.²¹² For clarity of discussion, we have broken the concept of change management into two prongs:

Is Verizon PA's change management process adequate with respect to systems?

Is Verizon PA's change management process adequate with respect to metrics?

The parties have generally agreed that change management is working with respect to systems change management. (3/5/01 Tr. at 154). We concur with that assessment and find no need for further discussion on the point.

²¹² We shall discuss Verizon PA's April 16, 2001 proposal to overhaul the Pennsylvania metrics in the Metrics and PAP section of this consultative report, where in we set forth the processes for future development and change of metrics, standards, and remedies.

We note, however, that metrics change management was an unresolved item from the OSS Test. In permitting the OSS Test to end and commercial availability to commence, we clearly recognized that the noted deficiencies in metrics change management could, if not corrected, affect this Commission's ability to review Verizon PA's performance on a going-forward basis. (1/5/01 Sec. Ltr.). Consistent with the applicable standards and precedents, we believe that such situation has now been rectified as further amplified in the following discussion.

b. Standard of Review

The FCC gives substantial consideration to the existence of an adequate systems change management process and evidence that the BOC has adhered to this process over time. NY Order ¶ 102; TX Order ¶ 106. Systems change management plans do not have to be identical to be effective. TX Order ¶109. Change management requires "concrete and irreversible steps" to implement change through the BOC's formal system change management process. However, the FCC does not require change management process for metrics as a condition of establishing checklist compliance. Nonetheless, the PAPUC will establish a requirement for change control process for metrics. MA Order ¶¶ 62-64.

c. Summary of the Evidence

Verizon PA's Position

Verizon PA asserts that its metrics change management process is adequate for 271 purposes. At the *en banc* hearing, Verizon PA agreed to give notice to the CLECs after internal approval but before implementation for certain metrics changes. Verizon PA also agreed to parity with the NJ matrix method for tracking adjustments and problems with the metrics. (4/26/01 Tr. at 380-401).

Other Parties' Positions

The CLECs argued at the *en banc* hearing that the open issue from the OSS Test had not been resolved and that they would like the metrics change management process to be modeled after the OSS change management process. The CLECs generally argue that Verizon PA makes adjustments to the existing metrics that are not always clear (the same aspect KPMG Consulting faulted in the OSS Test). The CLECs were also concerned over unilateral changes (*i.e.*, unannounced) and planned changes (which sometimes did not work properly) to the existing metric processes. The CLECs maintain that the metrics are cloaked in a virtual shroud and that changes are not always apparent. 4/27/01 Tr. at 540, *passim*.

In particular, AT&T argues, *inter alia*, that the CLECs are “completely uninformed” about modifications to metrics and C2C reports. AT&T 4/18/01 Comments, 39-46. AT&T alleges that Verizon PA unilaterally changes aspects of the metrics, *e.g.*, the retail analog for measuring parity in PO-1-04, with the alleged potential for masking discriminatory performance. AT&T 4/18/01 Comments, 46-47.

AT&T praised the New Jersey matrix method of tracking adjustments and problems with the metrics as used in the New Jersey metrics change management process. The CLECs accepted Verizon PA’s offer to give notice to the CLECs after internal Verizon PA approval but before implementation for certain metrics changes. The CLECs agreed to using the New Jersey matrix method in the same mode as it is used or may be further refined in New Jersey. (4/26/01 Tr. at 380-401).

d. KPMG Consulting Commentary

KPMG Consulting made no specific analysis of metrics change management processes during the commercial availability period. KPMG Consulting 5/31/01 Metrics Final Rep. KPMG Consulting does, however, support an open dialog between the CLECs and Verizon PA, with the PAPUC’s assistance, for addressing metrics change

management issues. 6/1/01 Meeting between KPMG Consulting and Commissioners and Staff.

e. Analysis

The consensus reached at the *en banc* hearing to use the New Jersey matrix method to handle metrics changes and adjustments made by Verizon PA is laudable.²¹³ The parties seem to be optimistic that the agreed-upon notice provisions and parity with the New Jersey matrix method will solve many of the articulated problems.

We find that the New Jersey matrix method is subject to an established regulatory change process (albeit in New Jersey) to which Verizon PA (or an affiliate) has committed. This regulatory process has a prioritized and on-going implementation plan.

f. Conclusion

We find that Verizon PA's change management processes for OSS changes are adequate to support our favorable 271 recommendation at this time. We also find that reliance on Verizon PA's commitment to use New Jersey matrix method for handling Verizon PA's changes to the metrics is adequate to support our favorable 271 recommendation at this time.

D. Checklist Item 3 -- Poles, Ducts, Conduits, and R-O-W

1. Description of Checklist Item

Verizon PA is required to provide nondiscriminatory access to the poles, ducts, conduits, and rights-of-way controlled by it at just and reasonable rates in accordance with the requirements of section 224 of the Communications Act of 1934 as amended by

²¹³ Verizon PA later submitted the agreement reached with AT&T in writing at staffs request.

the TA-96 pursuant to section 271(c)(2)(B)(iii) and applicable rules promulgated by the FCC.²¹⁴

2. Standard of Review

Section 271(c)(2)(B)(iii) requires a BOC to provide “[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224. . . .”²¹⁵ Section 224, in turn, requires a utility to “provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.”²¹⁶

Section 224(c)(1) states that “[n]othing in [section 224] shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection(f), for pole attachments in any case where such matters are regulated by a State.”²¹⁷ Section 224(c)(3) states, however, that “a State shall not be considered to regulate the rates, terms, and conditions for pole attachments – (A) unless the State has issued and made effective rules and regulations implementing the State’s regulatory authority over pole attachments.”²¹⁸ (The term “pole attachment” is defined by section 224(a)(4) as meaning “any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.”)²¹⁹

²¹⁴ 47 U.S.C. §271(c)(2)(B)(iii).

²¹⁵ Id.

²¹⁶ 47 U.S.C. §224(f)(1).

²¹⁷ 47 U.S.C. §224(c)(1).

²¹⁸ 47 U.S.C. §224(c)(3)(A).

²¹⁹ 47 U.S.C. §224(a)(4).

With the exception of its approval of Verizon PA's Tariff Pa. PUC No. 303,²²⁰ for access to ducts and conduits by telecommunications carriers, in the 1980's, the PAPUC opted to defer to federal regulation of pole attachments²²¹ by not making the requisite certification to the FCC and by not adopting regulations as required by sections 224(c)(2)(A) and 224(c)(3)(A).²²² In Re Pittsburgh Tele-Communications, Inc., et al., v The Bell Telephone Company of Pennsylvania, Docket No. R-842772C001(Order entered November 17, 1987), the PAPUC stated:

However, it is clear that the regulations proposed by our Opinion and Order entered December 20, 1984, at Docket M-78080077, have not been adopted in final form and that we have not made the requisite certification to the FCC. Therefore, from the effective date of the Cable Communications Policy Act of 1984, viz. December 30, 1984, [the PAPUC] has been without the jurisdiction in question by virtue of not having formally or timely adopted "effective rules and regulations implementing the State's regulatory authority over pole attachments [including duct or conduit]" (47 U.S.C. §224(c)(3)). To the extent that we could make this certification in the present or near future, we hereby exercise our discretion not to do so. At the same time, however, we express our intention to retain the option to assert jurisdiction in the future, to the extent permitted by then effective law.

64 PA PUC, 257, 265 (footnote omitted).

3. Summary of the Evidence Before PAPUC

a. Verizon PA

²²⁰ The Bell Telephone Company of Pennsylvania's Tariff Pa. PUC No. 303, Conduit Occupancy for Communications Facilities, became effective June 3, 1985, pursuant to PA PUC Order entered May 17, 1985, at Docket No. R-842772. By its Order entered November 17, 1987, at Docket No. R-842772C001, the PA PUC, among other things, excluded cable television companies from application of Tariff Pa. PUC No. 303. 64 PA PUC, 257, 260, 266.

²²¹ See, 47 C.F.R. §§1.1401-1.1418 (2000).

²²² 47 U.S.C. §§224(c)(2)(A) and 224(c)(3)(A).

Verizon PA offers telecommunications carriers access to poles and rights-of-way at rates, terms and conditions stated in its standard licensing agreements. Access to ducts and conduits by telecommunications carriers is provided pursuant to state tariff (Tariff Pa. PUC No. 303), while access to ducts and conduits by cable television providers is provided by separate license agreement. Interconnection agreements also offer telecommunications carriers access to poles, ducts, conduits and rights-of-way on rates, terms, and conditions stated in standard license agreements and the tariff.²²³

From January 1, 2000, through November 30, 2000, Verizon PA received 730 applications for access to poles and 225 applications for access to ducts and conduits.²²⁴ Verizon PA initially reported that, for the months July 2000 through November 2000, 99.7% of its responses to these applications were provided within 45 days of receipt of the application.²²⁵ However, Verizon PA subsequently revised the percentage of responses provided within 45 days to 97% to allow for possible delays in internal distribution prior to beginning the count of the response time.²²⁶ Verizon PA also stated that it has changed the way in which it calculates timeliness of responses to applications to ensure that the measurement captures the full time that the application is in its hands.²²⁷

From January 1, 2000, through September 30, 2000, Verizon PA provided 887 licenses for 9,896 pole attachments and granted access to 235,852 feet of conduit, and from October 1, 2000, through February 28, 2001, Verizon PA approved 439 licenses for

²²³ Cklist Dec. at ¶¶ 119-120.

²²⁴ Cklist Dec. at ¶ 126.

²²⁵ Id.

²²⁶ Verizon PA also reported similar results for the months of December 2000 through February 2001, when it responded to applications for access within 45 days of receipt of the application 97.85% of the time. Suppl. Cklist Dec. at ¶ 60.

²²⁷ Verizon PA April 18, 2001 Comments at 21.

5,679 pole attachments and access to 204,748 feet of conduit, bringing total pole attachments to 585,025 and total conduit occupancy to 886,337 feet. Pole attachments have been provided to 23 telecommunications carriers and 206 cable television companies, and access to ducts and conduits has been provided to 42 telecommunications carriers. No carrier has requested access to Verizon PA's private rights-of-way.²²⁸

According to Verizon PA, access to poles, ducts, conduits and rights-of-way is provided on a "first come, first served" basis through a two-step process: first, upon written request, Verizon PA provides access to information about the location of its facilities; and second, it processes each application using the same standards of safety, reliability, capacity, and engineering that it applies to its own projects.²²⁹

From July 1, 2000, through November 30, 2000, Verizon PA received nine requests for access to its pole, duct, conduit, and rights-of-way records, and from December 1, 2000, through February 28, 2001, it received an additional ten requests. All 19 requests were met within ten business days of the request.²³⁰

Verizon PA reports that during the period from July 1, 2000, through November 30, 2000 it was able to use existing spare capacity to satisfy approximately 36% of applications without the need for any make-ready work. Similar results were reported for the period December 1, 2000, through February 28, 2001, when 37.6% of applications were satisfied without the need for make-ready work.²³¹

Make-ready work and related costs apply to a request for access if a survey by Verizon PA shows that space is not available, but that the request could be

²²⁸ Cklist Dec. at ¶ 118; Suppl. Cklist Dec. at ¶¶ 63-64.

²²⁹ Cklist Dec. at ¶¶ 122, 124.

²³⁰ Cklist Dec. at ¶ 123; Suppl. Cklist Dec. at ¶ 59.

²³¹ Cklist Dec. at ¶ 130; Suppl. Cklist Dec. at ¶ 61.

accommodated by performing make-ready work. Make-ready work may include rearrangement, transfer, replacement, removal, or modification of Verizon PA-owned facilities. Verizon PA coordinates make-ready work and has a construction workforce of 504 outside plant technicians available to complete the work. As need arises, additional technicians can be hired and contract forces can be used to complete make-ready work on a timely basis.²³²

Verizon PA states that it uses the same employees and independent contractors to perform make-ready work for both itself and requesting carriers. Under the terms of its labor agreement, Verizon PA's union employees must perform make-ready work involving fiber optic plant. Otherwise, make-ready work can be done by either Verizon PA employees or Verizon PA-approved independent contractors.²³³

Once the need for make-ready work is identified and the applicant is notified of the estimated cost, Verizon PA waits for the applicant to respond and to make payment of the estimated make-ready cost.²³⁴ Before beginning make-ready work to poles, ducts, conduits or rights-of-way that contain facilities of existing licensees, Verizon PA provides 60 days prior notice to the existing licensee.²³⁵

Verizon PA states that from July 1, 2000, through November 30, 2000, it completed make-ready work for requesting carriers within an average of 69 days, compared to an average of 81 days to complete its own make-ready work. Verizon PA further states that during the period December 1, 2000, through February 28, 2001, it experienced make-ready work completions averaging 66.6 days for other carriers and

²³² Cklist Dec. at ¶¶ 127, 133.

²³³ Cklist Dec. at ¶ 128.

²³⁴ 2/21/01 Technical Conference at 66.

²³⁵ Cklist Dec. at ¶ 129.

106.3 days for its own make-ready work.²³⁶ Verizon PA's internal metric for completion of make-ready work is in parity with make-ready work for its own jobs; consequently, Verizon PA contends that it provides "better-than-parity" service in performing pole attachment make-ready work.²³⁷

In response to CLEC requests, Verizon PA has implemented the following new procedures and policies, applicable to all carriers:²³⁸

- Verizon PA now permits the use of a 4-inch extension bolt by parties licensed to attach to Verizon PA-owned poles.
- Verizon PA will allow the use of pole top extensions and pole top pins for attachment of electric utility facilities to Verizon PA-owned poles.
- If a bill for make-ready work is 25% more or less than the estimate of make-ready costs previously provided, Verizon PA will review the bill before sending it to the attacher. If the charges are justified, Verizon PA will provide an explanation of the modified charges in addition to the detailed information already provided in the bills for make-ready work.
- Verizon PA will provide applicants with a weekly status report on make-ready jobs including, where available, status of the electric utility's make-ready work on its poles.
- Effective March 1, 2001, Verizon PA measures the 45-day period for response to an application for access beginning on the date of receipt by Verizon PA (e.g., the day that Verizon PA signs for a FEDEX package) and ending when a response is sent by Verizon PA (e.g., the day that the response is given to FEDEX for delivery to the applicant).²³⁹

²³⁶ Cklist Dec. at ¶ 131; Suppl. Cklist Dec. at ¶ 62.

²³⁷ Verizon PA Comments 4/18/01 at 20.

²³⁸ Suppl. Cklist Dec. at ¶¶ 66-71.

²³⁹ Performance Metric GE-2. Presently, this is the only metric measuring Verizon PA's performance under Checklist item 3.

- Although the standard for completion of make-ready work for CLECs remains parity with make-ready work for Verizon PA's own jobs, Verizon PA will strive to meet target times of 60 days for completion of Verizon PA make-ready work and seven days for issuance of licenses.

b. Other Parties' Positions

RCN, Cavalier, and the PCTA filed comments with respect to access to poles. Issues addressed by RCN included use of certain pole attachment devices, whether Verizon PA has met the requirement to respond to pole attachment requests within 45 days, whether the length of time taken by Verizon PA to complete make-ready work is excessive, and whether Verizon PA's practice of not providing an itemization of the cost of make-ready work is discriminatory.²⁴⁰ Cavalier's comments addressed the use of certain pole attachment devices and the cost and timeline for the completion of make-ready work.²⁴¹ PCTA took no position on Checklist item 3 after assurances by Verizon PA that it intends to apply pole attachment changes on an equal and nondiscriminatory basis to all applicants, including Verizon PA's affiliate, Verizon Advanced Data, Inc. ("VADI")²⁴²

RCN and Cavalier requested that Verizon PA allow them to attach to poles through the use of devices such as extension bolts, brackets, boxing (attaching to both sides of the pole), and fiberglass pole top extensions in order to reduce make-ready costs. RCN contended that Verizon PA regularly uses such devices when it adds additional wiring of its own to its poles and that Verizon PA has allowed widespread use of brackets on its poles by the incumbent cable provider while not allowing RCN to do so. Cavalier stated that failure to allow these less expensive attachment methods forces CLECs to pay

²⁴⁰ RCN 2/12/01 Comments at 2-19.

²⁴¹ Cavalier 2/12/01 Comments at 3.

²⁴² PCTA 4/18/01 Comments at 1-2.

for and correct other attacher's violations and causes discriminatory delays in completion of make-ready work.²⁴³

Verizon PA's witness identified certain limited circumstances under which Verizon PA uses these attachment devices and techniques on its poles. The extension bolt, in particular, is used by Verizon PA on a temporary basis until a permanent method of attachment can be put into place, and the pole top extension is allowed under Verizon PA's pole attachment agreement with PECO Energy Company.²⁴⁴ Verizon PA also acknowledged that it uses extension brackets to offset the need for guying, and that boxing is an allowable method of attaching to poles.²⁴⁵

Specifically, with regard to the requirement that the utility respond to a pole attachment application or confirm the denial in writing within 45 days of the date of application,²⁴⁶ RCN contended that Verizon PA had responded to its requests on average in 49 days; however, its witness indicated that RCN's calculation included a day or two for mailing time.²⁴⁷ Verizon PA's witness indicated that Verizon PA's calculation of the 45-day period does not include mailing time; however, as previously stated, the witness also acknowledged that on some occasions there had been a lag of several days between receipt of the application and the start of its tracking process.²⁴⁸

In its comments, RCN stated that it has requested Verizon PA to commit to a construction schedule similar to that which RCN's affiliate has with Verizon New York

²⁴³ RCN 2/12/01 Comments, Appendix A, ¶¶ 14-16; Cavalier 2/12/01 Comments at 3.

²⁴⁴ 2/21/01 Tr. at 80, 95-96.

²⁴⁵ Id. at 140-141.

²⁴⁶ See, 47 C.F.R. § 1.1403(b).

²⁴⁷ 2/21/01 at 89-90, 134.

²⁴⁸ Id., pp. 134, 138-139.

where make-ready work that does not involve pole replacement will be completed within 60 days of payment of estimated costs and make-ready work requiring pole replacement will be completed within 90 days of payment.²⁴⁹ Cavalier stated that Verizon PA should establish a standard timeline to complete make-ready work and should not wait a full 60 days before it begins make-ready work.²⁵⁰

As stated above, Verizon PA subsequently agreed to strive to meet a target timeframe of 60 days for completion of make-ready work while the standard for completion remains parity with its own make-ready work.²⁵¹

RCN stated that it has, on numerous occasions, asked Verizon PA to provide specific pricing for each pole itemized by specific tasks in order that RCN can better monitor its costs. Verizon PA has refused these requests and has not provided any justification for doing so.²⁵²

Verizon PA has also subsequently agreed to make available to all attachers the additional information requested by RCN when actual make-ready costs vary from estimated costs by 25%.²⁵³

Based upon the aforementioned new procedures implemented by Verizon PA, by letter dated March 23, 2001, RCN stated that its concerns relating to access to poles, ducts, conduits, and rights-of-way are now being adequately addressed and that it no longer opposes Verizon PA's entry into the long distance market in Pennsylvania

²⁴⁹ RCN 2/12/01 Comments, Appendix A, ¶¶ 10-11.

²⁵⁰ Cavalier 2/12/01 Comments at 3.

²⁵¹ Suppl. Cklist Dec. ¶ 71.

²⁵² RCN 2/12/01 Comments Appendix A ¶ 13.

²⁵³ Suppl. Cklist Dec. at ¶ 68.

pursuant to section 271 of TA-96. Therefore, RCN withdrew from further participation in this proceeding.

4. Discussion

In response to the concerns of the parties, Verizon PA has implemented additional pole attachment procedures and policies, applicable to all carriers, that: (1) allow for the use of additional pole attachment procedures; (2) provide an explanation on make-ready work cost variances in excess of 25%; (3) provide weekly make-ready construction work status reports; (4) revise the way in which Verizon PA measures its compliance with the 45-day period for response to applications for access; (5) and establish target timeframes of 60 days for completion of make-ready work and seven days for issuance of a license, following completion of make-ready work. These procedures and policies meet the concerns of the CLEC parties to this proceeding, the PAPUC is satisfied that Verizon PA provides nondiscriminatory access to poles, ducts, conduits and rights-of-way at just and reasonable rates.

The record indicates that license applications are processed on a first-come, first-served basis.²⁵⁴ Requests for attachments are directed to a Pole and Conduit Administrator who is responsible for coordinating all aspects of the application.²⁵⁵

Regarding methods of attachment, in Cavalier Telephone, LLC v. Virginia Electric and Power Company,²⁵⁶ the FCC Cable Services Bureau noted that the premise that a pole owning utility cannot discriminate against an attacher in favor of other attachers or itself is at the heart of TA-96. It further found that “[the pole owning utility]

²⁵⁴ Cklist Dec. at ¶ 124.

²⁵⁵ Cklist Dec. Attachment 208 at ¶¶ 2.01-3.01.

²⁵⁶ Cavalier Telephone, LLC v. Virginia Electric and Power Company, 15 FCC Rcd 9563; 2000 FCC LEXIS 2933.

uses extension arms and boxing for its own attachments and must allow other attachers to do the same.”²⁵⁷ Verizon PA’s new procedures and policies allow other parties to attach to its poles using methods of attachment employed by Verizon PA for its own facilities, e.g., extension bolts, pole top extensions, and pole top pins.

47 C.F.R. § 1.1403(b) requires a pole owning utility to respond to a written request for pole access by the 45th day following request for access. In Cavalier, quoting from the Matter of Application of Bellsouth Corp., FCC 98-271, 13 FCC Rcd 20599 (1988), the FCC found 47 C.F.R. § 1.1403(b)) “to mean that a pole owner ‘must deny a request for access within 45 days of receiving such a request or it will otherwise be deemed granted.’”²⁵⁸

While Verizon PA’s initial tracking of its compliance with the requirement of 47 C.F.R. § 1.1403(b) failed to account for a period of time ranging from one to three days between initial receipt of applications and their entrance into its tracking system, Verizon PA has taken the necessary steps to ensure that its tracking system currently reflects its response time from the date of receipt of the application through the date its response is posted for delivery to the applicant. It is concluded that Verizon PA’s revised calculation of having met the 45-day requirement for 97% of applications received between January 2000 and February 2001 is adequate to meet the requirements of 47 C.F.R. § 1.1403(b) and Performance Metric GE-2.

As for Cavalier’s comment that Verizon PA should not wait a full 60 days before beginning make-ready work, the PAPUC finds that Verizon PA complies with Checklist item 3. FCC rules require the pole owning utility to provide a 60-day notification to existing licensees prior to modifying the facilities through make-ready work. 47 C.F.R.

²⁵⁷ Id. at ¶ 19 (footnotes omitted).

²⁵⁸ Id. at ¶ 15.

§ 1.1403(c)(3). The only work that Verizon PA can do during this period is preparation of the work order for the make-ready work, which Verizon PA has stated it does simultaneously with the 60-day notification period.²⁵⁹ Finally, for the one metric associated with Checklist Item 3, we note that Verizon PA met the standard 100% of the time during the commercial availability period.

5. Conclusion

Based on the record evidence and the foregoing discussion and analysis, the PAPUC finds that Verizon PA has conclusively demonstrated that it is providing nondiscriminatory access to its poles, ducts, conduits, and rights-of-ways at just and reasonable rates, terms, and conditions in accordance with the requirements of section 224²⁶⁰ and has satisfied the requirements of Checklist item 3. Verizon PA has acted to implement new procedures and policies to address the majority of issues raised by commentators.

E. Checklist Item 4 – Unbundled Local Loops

1. Description of Checklist Item

Section 271(c)(2)(B)(iv) of TA-96 requires that Verizon PA provide local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.²⁶¹ Verizon PA has an obligation to provision different types of loops, including two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as Integrated Services Digital Network ("ISDN"), Asymmetrical Digital Subscriber Line ("ADSL"), High-bit-rate Digital Subscriber Line ("HDSL"), 1.544 Mbps

²⁵⁹ 02/21/01 Technical Conference at 67.

²⁶⁰ 47 U.S.C. § 224.

²⁶¹ Verizon Massachusetts Order at 121.